

FEB 10 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JULIO RAMOS-OSGUERA, a.k.a.

Jesse,

Defendant - Appellant.

No. 05-15632

D.C. Nos. CV-05-00942-DLJ
CR-93-00326-DLJ

MEMORANDUM^{*}

Appeal from the United States District Court
for the Northern District of California
D. Lowell Jensen, District Judge, Presiding

Argued April 4, 2006; Resubmitted January 5, 2009
San Francisco, California

Before: NOONAN, and SILER,^{**} and BYBEE, Circuit Judges.

Petitioner Julio Cesar Ramos-Oseguera appeals the district court's denial of his motion to vacate, set aside, or correct a judgment and sentence under 28 U.S.C.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The Honorable Eugene E. Siler, Jr., Senior United States Circuit Judge for the Sixth Circuit, sitting by designation.

§ 2255. The parties are familiar with the facts and procedural history of this case and we do not repeat them here. Ramos-Oseguera argues that the admission of his wife’s prior testimonial statements violated his Sixth Amendment Confrontation Clause rights under *Crawford v. Washington*, 541 U.S. 36 (2004). For the reasons set forth below, we affirm.

For habeas claims based on new constitutional rules of criminal procedure that are announced after the conclusion of a petitioner’s direct appeal, a federal court can only grant relief under 28 U.S.C. § 2255 if the new rule applies retroactively under *Teague v. Lane*, 489 U.S. 288 (1989). *See United States v. Sanchez-Cervantes*, 282 F.3d 664, 667-68 (9th Cir. 2002) (holding that the *Teague* analysis applies to petitions under 28 U.S.C. § 2255). Ramos-Oseguera relies on the new rule enumerated in *Crawford*—which was decided after the conclusion of his direct appeal—as the legal basis for his current petition.

However, in *Whorton v. Bockting*, 127 S. Ct. 1173 (2007), the Supreme Court held that *Crawford* “does not fall within the *Teague* exception for watershed rules,” and therefore does not apply retroactively. *Id.* at 1184. Because *Crawford* does not have a retroactive effect, Ramos-Oseguera cannot take advantage of the *Crawford* rule for purposes of this federal habeas petition, and he has no legal basis supporting his claims of a constitutional violation.

Accordingly, we AFFIRM the district court's judgment.